

**Letter of Findings: 04-20140267P
Gross Retail Tax
For the Years 2010, 2011, and 2012**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until it is superseded or deleted by the publication of another document in the Indiana Register.

ISSUE

I. Gross Retail Tax - Negligence Penalty.

Authority: IC § 6-8.1-5-1(c); IC § 6-8.1-10-2.1(a)(3); IC § 6-8.1-10-2.1(a)(2); IC § 6-8.1-10-2.1(d); [45 IAC 15-11-2\(b\)](#); [45 IAC 15-11-2\(c\)](#).

Taxpayer argues that the Department of Revenue should abate the ten-percent negligence penalty because the audit assessment of additional sales and use tax was not attributable to the Taxpayer's willful neglect.

STATEMENT OF FACTS

Taxpayer is an Indiana business which provides computer and document imaging services. Taxpayer rents, sells, and services imaging equipment and document managing application. In addition, Taxpayer provides computer consulting and management services.

The Indiana Department of Revenue ("Department") conducted a sales, income, and withholding audit of Taxpayer's business records and tax returns. The income and withholding audit did not result in the assessment of additional tax. The sales tax audit assessed additional sales/use tax. Taxpayer agreed with the sales/use tax assessment but disagreed with the assessment of a ten-percent negligence penalty. Taxpayer filed a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

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DISCUSSION

The Department assessed Taxpayer additional sales/use tax based upon a "projection" methodology to which both the Department and Taxpayer agreed. The audit found that "[T]axpayer purchased tangible personal property where no Indiana sales tax was paid at the point of purchase and no use tax was remitted." The audit found that Taxpayer purchased "computer equipment and supplies, cleaning and shop supplies, promotional items" without paying sales tax or self-assessing use tax. Taxpayer agreed with the assessment and paid the additional tax. However, Taxpayer argues that the "negligence" penalty was unwarranted and that it is entitled to abatement of that penalty.

IC § 6-8.1-10-2.1(a)(3) requires that a ten-percent penalty be imposed if a tax deficiency results from the taxpayer's negligence. IC § 6-8.1-10-2.1(a)(2) requires a ten-percent penalty if the taxpayer "fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment."

IC § 6-8.1-10-2.1(d) states that, "If a person subject to the penalty imposed under this section can show that the failure to . . . pay the full amount of tax shown on the person's return . . . or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall wave the penalty."

Departmental regulation [45 IAC 15-11-2\(b\)](#) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

Departmental regulation [45 IAC 15-11-2\(c\)](#) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed"

Under IC § 6-8.1-5-1(c), "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." An assessment - including the negligence penalty - is presumptively valid.

The assessment was negligible when compared to the amount of purchases made by Taxpayer during the audit period. Although the audit assessed additional tax, the report contains nothing which would indicate that Taxpayer willfully failed to fulfill its responsibility under the law.

There is insufficient information to conclude that Taxpayer's actions constituted "willful neglect." Based on a "case-by-case" analysis and after reviewing "the facts and circumstances of each taxpayer" the Department agrees that the ten-percent negligence penalty should be abated.

FINDING

Taxpayer's protest is sustained.

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